

RAJESH KUMAR & ORS. ETC.

A

v.

STATE OF BIHAR & ORS. ETC.

(Civil Appeal Nos. 2515-2516 of 2013 etc.)

MARCH 13, 2013

B

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Service Law:

Selection/Appointment - On the basis of competitive examination - Evaluation of answer scripts challenged - Defect found in 'Model Answer Key' to one of the papers - High Court directed to conduct fresh examination in the paper having defective 'Model Answer Key' - Held: The entire selection process was vitiated by use of defective 'Model Answer Key' and appointments made on the basis of such examination would also be rendered unsustainable - However, in the facts of the case, instead of directing fresh examination, correcting the defect by evaluation of answer scripts with correct key was better option - The re-evaluation would affect only inter-se seniority among the candidates - The already appointed candidates, after re-evaluation, if did not make the grade, would not be ousted from service, but would figure at the bottom of the select list.

C

D

E

Respondent Nos. 6 to 18, who were unsuccessful candidates in the written objective type examination, conducted by State Staff Selection Commission for appointment to the post of Junior Engineer, filed writ petition in the High Court challenging the evaluation of the answer scripts. The successful candidates i.e. the appellants were not impleaded as parties. During pendency of the petition, the successful candidates were appointed in the different Departments of the State. Single Judge of the High Court referred the "Model

F

G

H

A Answer Key" to experts. The experts gave their report that in Civil Engineering paper, answer to 45 questions were wrong, two questions were repeated and one question was defective. Single judge of the High Court cancelled the entire examination as well as the
B appointments made on its basis. Division Bench of the High Court partly allowed the writ appeal, holding that entire examination was not required to be cancelled as there was no allegation of any corrupt motive or malpractice with regard to other question papers. The
C Court directed to rectify the defect by conducting fresh examination in Civil Engineering paper only.

During pendency of the writ appeal fresh selection process was initiated, wherein 6 of the respondents were appointed while the rest opted not to join.

D

In appeal to this Court, the appellants contended that High Court committed an error in quashing the entire selection process, even when the petitioners-respondents had not prayed to that effect; and that even
E if the result of the first selection process was vitiated by the use of erroneous 'Model Answer Key', the court could have rectified the defect by directing re-evaluation of answer scripts. The appellants also prayed for a suitable direction that after re-evaluation, if they fell below the cut-
F off line, they should not be ousted from service and the re-evaluation would determine only inter-se seniority.

Allowing the appeals, the Court

HELD: 1. The Division Bench of the High Court was
G justified in holding that the result of the examination in so far as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination *qua* every candidate whether or not he was a party to the proceedings. If the result was vitiated
H by the application of a wrong key, any appointment made

on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key. [Para 12] [762-A-D]

Bharat Amritlal Kothari v. Dosukhan (2010) 1 SCC 234: 2009 (15) SCR 662; *State of Orissa and Anr. v. Mamata Mohanty* (2011) 3 SCC 436: 2011 (2) SCR 704 - distinguished.

2. Given the nature of the defect in the answer key, the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will, in addition, be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. The re-evaluation, thus was and is a better option, in the facts and circumstances of the case. [Para 16] [763-E-H]

3. The appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be

A relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter-se position on the merit list. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever. Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection and the second selection. [Paras 18 and 19(2),(4)] [764-H; 765-A-C, F; 766-A-B]

Case Law Reference:

2009 (15) SCR 662 distinguished Para 13

2011 (2) SCR 704 distinguished Para 13

E CIVIL APPELLATE JURISDICTION : CIVIL APPEAL Nos. 2515-2516 of 2013.

F From the Judgment & Order dated 01.02.2008 of the High Court of Judicature at Patna in L.P.A. Nos. 70 and 72 of 2008.

P.P. Rao, Rajeev Kumar, Dr. Kailash Chand, Ashutosh Kumar, Sanjay Kumar Mishra, Manish Kumar Choudhary, S.K. Verma for the Appellants.

G Nagendra Rai, Gopal Singh, Anshuman Sinha, Ajay Vikram Singh, Vijay Kumar Pandey, Priyanka, Naresh Kumar, Smarhar Singh, Shantanu Sagar, Abhishek Kr. Singh, Aabhas Parimal, Gaurav Agrawal, Susmita Lal, Malabika Sarkar, Ashesh Lal, Amit Pawan, Vivek Singh, Prashant Kumar, T. H Mahipal for the Respondents.

The Judgment of the Court was delivered by

A

T.S. THAKUR, J. 1. Leave granted.

2. Application of an erroneous "Model Answer Key" for evaluation of answer scripts of candidates appearing in a competitive examination is bound to lead to erroneous results and an equally erroneous inter-se merit list of such candidates. That is precisely what appears to have happened in the present appeals which arise out of a common judgment delivered by the High Court of Judicature at Patna whereby the High Court has directed the Bihar Staff Selection Commission to conduct a fresh examination and re-draw the merit list on that basis. For those who have already been appointed on the basis of the earlier examination, a fresh examination has been directed by the High Court before they are finally ousted from the posts held by them. The appellants who happen to be the beneficiaries of the erroneous evaluation of the answer scripts have assailed the order passed by the High Court in these appeals which arise in the following backdrop:

B

C

D

3. By an advertisement dated 14th August 2006, applications were invited by the Bihar State Staff Selection Commission from eligible candidates for appointment against 2268 posts of Junior Engineer (Civil) out of which 1057 posts were in the open merit category. The selection process, it appears, comprised a written objective type examination, held by the Staff Selection Commission who drew up a Select List of 210 successful candidates including 143 appellants in these appeals based on the performance of the candidates in the examination. The evaluation of the answer scripts was, however, assailed by 13 unsuccessful candidates, respondents 6 to 18 in these appeals, in CWJC No.885 of 2007. The writ petitioners did not implead the selected candidates as party respondents ostensibly because the petitioners prayed for a limited relief of a writ of mandamus to the Staff Selection Commission to produce the answer-sheets in the Court and to get the same re-evaluated manually by an independent body.

E

F

G

H

A 4. While the above writ petition was still pending, 35
 candidates were appointed as Junior Engineers in Road
 Construction Department of the Government of Bihar while 144
 others were appointed in Water Resources Department. Nine
 of the selected candidates were appointed in the Public Health
 B Engineering Department taking the total number of those
 appointed to 188 out of 210 candidates included in the merit
 list. Posting orders were also issued to all those appointed.
 C Needless to say that since only 210 candidates had qualified
 for appointment in terms of the relevant Rules, the selection
 process left nearly 2080 posts of Junior Engineers unfilled in
 the State.

D 5. In the writ petition filed by the aggrieved candidates, a
 Single Judge of the High Court referred the "Model Answer
 Key" to experts. The model answers were examined by two
 D experts, Dr. (Prof.) C.N. Sinha, and Prof. KSP Singh,
 associated with NIT, Patna, who found several such answers
 to be wrong. In addition, two questions were also found to be
 wrong while two others were found to have been repeated.
 Question No.100 was also found to be defective as the choices
 E in the answer key were printed but only partially.

F 6. Based on the report of the said two experts, a Single
 Judge of the High Court held that 41 model answers out of 100
 were wrong. It was also held that two questions were wrong
 while two others were repeated. The Single Judge on that basis
 held that the entire examination was liable to be cancelled and
 so also the appointments made on the basis thereof. Certain
 further and consequential directions were also issued by the
 Single Judge asking the Commission to identify and proceed
 G against persons responsible for the errors in the question paper
 and the "Model Answer Key".

H 7. Aggrieved by the order of the Single Judge, the
 appellants filed LPA No.70 of 2008 before the Division Bench
 of that High Court. By the order impugned in these appeals,
 the High Court has partly allowed the appeal holding that model

answers in respect of 45 questions out of 100 were wrong. The Division Bench modified the order passed by the learned Single Judge and declared that the entire examination need not be cancelled as there was no allegation of any corrupt motive or malpractice in regard to the other question papers. A fresh examination in Civil Engineering Paper only was, according to the Division Bench, sufficient to rectify the defect and prevent injustice to any candidate. The Division Bench further held that while those appointed on the basis of the impugned selection shall be allowed to continue until publication of the fresh result, anyone of them who failed to make the grade on the basis of the fresh examination shall be given a chance to appear in another examination to be conducted by the Staff Selection Commission. The present appeals assail the correctness of the said judgment and order of the High Court as already noticed earlier.

8. It is noteworthy that while the challenge to the selection process referred to above was still pending before the High Court, a fresh selection process was initiated to fill up the available vacancies in which those eligible appeared for a written test on 29th July 2007. This test was held pursuant to advertisement No.1906 of 2006 issued on 29th November 2006. The result of the examination was, however, stayed by the High Court while disposing of the appeal filed before it with a direction to the effect that the same shall be declared only after selection in pursuance of the first examination was completed. With the filing of the present appeals the restraint order against the declaration of the result pursuant to the second advertisement was vacated by this Court by an order dated 30th August 2011 with a direction that those qualified shall be given appointments without prejudice to the rights of the appellants and subject to the outcome of these appeals.

9. It is common ground that pursuant to the above direction, a list of 392 selected candidates was sent to the State Government by the Staff Selection Commission for issuing

A appointment orders in their favour. What is significant is that
the writ petitioners, respondents 6 to 18 in these appeals were
also declared successful in the second selection and included
in the list of 392 successful candidates. That six out of the said
respondents have been appointed while the remaining have not
B chosen to join is also admitted. They have apparently found
better avenues of employment.

10. When the matter came up before us on 2nd July 2012,
it was argued on behalf of the writ petitioners - respondents 6
C to 18 by Mr. Gaurav Agrawal that they have no objection to the
continuance in office of the appellants in these appeals subject
to the condition that the answer scripts of the writ petitioners
are re-evaluated with the help of a correct answer key and if
they are found to have made the grade, the benefit of
D appointment earned by them in terms of the 2nd selection
process related back to the date when the appellants in these
appeals were first appointed, and their seniority determined
according to their placement in the merit list. It was in that
background that we directed an affidavit to be filed by the
Government of Bihar whether it was agreeable to the re-
E evaluation of the answer scripts of respondents 6 to 18 on the
basis of a correct key and their placement in the merit list
depending upon the inter-se merit of the candidates. The Staff
Selection Commission was also similarly directed to respond
to the proposal made by the writ petitioners - respondents 6 to
F 18 and file an affidavit.

11. An affidavit has, pursuant to the above directions, been
filed by the Commission as also by the Chief Secretary of the
Government of Bihar in which the Staff Selection Commission
as also the Government appear to be opposing the prayer
G made by the writ petitioners for re-evaluation of their answer
scripts for the purpose of re-casting of the merit list which will
eventually be the basis for their inter-se seniority also. The
affidavits primarily do so on the premise that any re-evaluation
H limited to the answer scripts of respondents 6 to 18, writ

petitioners before the High Court would lead to multiplicity of legal proceedings as similar requests for re-evaluation are bound to be made by other candidates who may also have been similarly prejudiced on account of the use of erroneous "Model Answer Key".

12. We have in the above backdrop heard learned counsel for the parties at some length who have taken us through the impugned orders and other material placed on record. Appearing for the appellants, Mr. P.P. Rao, learned senior counsel, argued that the High Court had committed an error in quashing the entire selection process even when the petitioners had not made any prayer to that effect. Mr. Rao was at pains to argue that a relief which was not even prayed for by the writ petitioners could not be granted by the Court whatever may have been the compulsion of equity, justice and good conscience. Reliance in support of that proposition was placed by him upon *Bharat Amritlal Kothari v. Dosukhan* (2010) 1 SCC 234 and *State of Orissa & Anr. v. Mamata Mohanty* (2011) 3 SCC 436. There is, in our view, no merit in that contention. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates as party respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same. The writ petitioners, it is evident, on a plain reading of the writ petition questioned not only the process of evaluation of the answer scripts by the Commission but specifically averred that the "Model Answer Key" which formed the basis for such evaluation was erroneous. One of the questions that, therefore, fell for consideration by the High Court directly was whether the "Model Answer Key" was correct. The High Court had aptly referred that question to experts in the field who, as already noticed above, found the "Model Answer Key" to be erroneous in regard to as many as 45 questions out of a total of 100 questions contained in 'A' series question paper. Other errors were also found to which we have referred earlier. If the key

A

B

C

D

E

F

G

H

A which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination in so far as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key.

D 13. The decisions of this Court in *Bharat Amritlal Kothari v. Dosukhan* (2010) 1 SCC 234 and *State of Orissa & anr. v. Mamata Mohanty* (2011) 3 SCC 436, relied upon by Mr. Rao are clearly distinguishable. The power of the Court to mould the relief, according to the demands of the situation, was never the subject matter of dispute in those cases. That power is well-recognized and is available to a writ Court to do complete justice between the parties. The first limb of the argument advanced by Mr. Rao fails and is accordingly rejected.

F 14. Mr. Rao next argued that even if the result of the first selection process was vitiated by the use of erroneous "Model Answer Key" the Court had the option of either directing re-evaluation of the answer scripts on the basis of a correct key or a fresh examination. Out of the two options the former was, according to Mr. Rao, better and ought to have served the purpose by not only saving considerable time but money and effort also. He urged that the Court could have removed the traces of any injustice or distortions in the selection process by directing re-evaluation of the answer scripts which would not

H

only present the true picture of the merit of the candidates concerned but prevent any further litigation or prejudice to candidates on account of long lapse of time.

15. Appearing for respondents 6 to 18 Mr. Agrawal submitted that he had no objection to the order of the High Court being modified so as to replace "a fresh examination" by "revaluation of the answer scripts" on the basis of a correct key. Counsel for the Staff Selection Commission also submitted, on instructions, that the answer scripts had been preserved and could be subjected to a fresh evaluation. Learned counsel for the parties were further agreeable to the key as proposed by Dr. (Prof.) C.N. Sinha and Prof. KSP Singh of NIT, Patna forming the basis of any such re-evaluation by a suitable modification and deletion of question Nos.6 and 46 which were found to be absurd and question No.34 and 63 which were repeated as Nos.74 and 93. They further agreed to the deletion of question No.100 the answer to which was not correctly printed.

16. The submissions made by Mr. Rao are not without merit. Given the nature of the defect in the answer key the most natural and logical way of correcting the evaluation of the scripts was to correct the key and get the answer scripts re-evaluated on the basis thereof. There was, in the circumstances, no compelling reason for directing a fresh examination to be held by the Commission especially when there was no allegation about any malpractice, fraud or corrupt motives that could possibly vitiate the earlier examination to call for a fresh attempt by all concerned. The process of re-evaluation of the answer scripts with reference to the correct key will in addition be less expensive apart from being quicker. The process would also not give any unfair advantage to anyone of the candidates on account of the time lag between the examination earlier held and the one that may have been held pursuant to the direction of the High Court. Suffice it to say that the re-evaluation was and is a better option, in the facts and circumstances of the case.

A 17. That brings us to the submission by Mr. Rao that while
re-evaluation is a good option not only to do justice to those
who may have suffered on account of an erroneous key being
applied to the process but also to writ petitioners-respondents
B 6 to 18 in the matter of allocating to them their rightful place in
the merit list. Such evaluation need not necessarily result in the
ouster of the appellants should they be found to fall below the
'cut off' mark in the merit list. Mr. Rao gave two reasons in
support of that submission. Firstly, he contended that the
appellants are not responsible for the error committed by the
C parties in the matter of evaluation of the answer scripts. The
position may have been different if the appellants were guilty
of any fraud, misrepresentation or malpractice that would have
deprived them of any sympathy from the Court or justified their
ouster. Secondly, he contended that the appellants have served
D the State efficiently and without any complaint for nearly seven
years now and most of them, if not all, may have become
overage for fresh recruitment within the State or outside the
State. They have also lost the opportunity to appear in the
subsequent examination held in the year 2007. Their ouster
E from service after their employment on the basis of a properly
conducted competitive examination not itself affected by any
malpractice or other extraneous consideration or
misrepresentation will cause hardship to them and ruin their
careers and lives. The experience gained by these appellants
F over the years would also, according to Mr. Rao, go waste as
the State will not have the advantage of using valuable human
resource which was found useful in the service of the people
of the State of Bihar for a long time. Mr. Rao, therefore, prayed
for a suitable direction that while re-evaluation can determine
the inter-se position of the writ petitioners and the appellants
G in these appeals, the result of such re-evaluation may not lead
to their ouster from service, if they fell below the cut off line.

18. There is considerable merit in the submission of Mr.
Rao. It goes without saying that the appellants were innocent
H parties who have not, in any manner, contributed to the

preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation. The re-evaluation process may additionally benefit those who have lost the hope of an appointment on the basis of a wrong key applied for evaluating the answer scripts. Such of those candidates as may be ultimately found to be entitled to issue of appointment letters on the basis of their merit shall benefit by such re-evaluation and shall pick up their appointments on that basis according to their inter se position on the merit list.

A

B

C

19. In the result, we allow these appeals, set aside the order passed by the High Court and direct that -

D

(1) answer scripts of candidates appearing in a series of competition examination held pursuant to advertisement No. 1406 of 2006 shall be got re-evaluated on the basis of a correct key prepared on the basis of the report of Dr. (Prof.) CN Sinha and Prof. KSP Singh and the observations made in the body of this order and a fresh merit list drawn up on that basis.

E

(2) Candidates who figure in the merit list but have not been appointed shall be offered appointments in their favour. Such candidates would earn their seniority from the date the appellants were first appointed in accordance with their merit position but without any back wages or other benefit whatsoever.

F

(3) In case writ petitioners-respondent nos. 6 to 18 also figure in the merit list after re-evaluation of the answer scripts, their appointments shall relate back to the date when the appellants were first appointed with continuity of service to them for purpose of seniority but without any back wages or other incidental benefits.

G

H

- A (4) Such of the appellants as do not make the grade after re-evaluation shall not be ousted from service, but shall figure at the bottom of the list of selected candidates based on the first selection in terms of advertisement No.1406 of 2006 and the second selection held pursuant to advertisement No.1906 of 2006.
- B

(5) Needful shall be done by the respondents - State and the Staff Selection Commission expeditiously but not later than three months from the date a copy of this order is made available to them.

C

20. Parties are directed to bear their own costs.

K.K.T.

Appeals allowed.